

Date

Ms. Jill DeSouge
47405 Whiskey Lane Ext
Tickfaw, LA 70466

Re: Board Docket No. 2020-807

Dear Ms. DeSouge:

The Louisiana Board of Ethics, at its March 5, 2021 meeting, considered your request for an advisory opinion regarding whether the Code of Governmental Ethics would prohibit your son, Brody DeSouge, independently or as an employee of KA-JI Construction, from being employed with RAWL, or a similar situated contractor with Tangipahoa Parish, while you are employed with the Parish Accounting Department, accounts payable section.

FACTS PROVIDED

You provided that you are employed by Tangipahoa Parish Government in the Accounting Department. You provided that you do not sign checks and you do not approve contracts for the Parish. You only process the checks. Further, you stated that you and your husband have a business, KA-JI Construction, LLC, that employs your son as a CDL driver. You would like to know if KA-JI Construction and/or your son, in his own right as an independent contractor, may subcontract with RAWL or the lowest bidder to haul material to the landfill for the parish. Further, you stated, if it causes a problem, KA-JI Construction would be willing not to contract with or accept any compensation from parish contractors even if your son uses the company truck to haul material to the landfill.

You stated that when the parish needs material hauled to the landfill, the purchasing agent calls vendors to get bids on hauling. The vendor with the lowest bid gets the job. The vendor will use their own trucks and/or hire additional trucks to help complete the job in a timely manner. For example, RAWL has been the lowest bidder and won the contract in the past. In the past RAWL has subcontracted with independent CDL drivers to haul material to the landfill.

When the job is complete the bid winner submits an invoice to the purchasing agent to approve, then the invoice goes to the Accounting Department and given to the finance director to approve, and you process the check. The check would be written to the lowest bidder, for example RAWL. Once you processed the check you submit it for signatures. If any extra CDL drivers are hired, RAWL pays the extra CLD drivers. Therefore, you would never process a check for your company or son.

ISSUES

Whether the Code of Governmental Ethics would prohibit your son from being employed, independently or as an employee of KA-JI Construction with RAWL or a similar situated contractor with Tangipahoa Parish while you are employed with the Parish?

LAW

La. R.S. 42:1111C(2)(d) provides that no public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (d) Neither performed for nor compensated by any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency; conducts operations or activities which are regulated by the public employee's agency; or has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

La. R.S. 42:1113A prohibits a public servant or a member of such public servant's immediate family or a legal entity in which he has controlling interest from bidding on or entering into any contract, subcontract or other transaction that is under the supervision or jurisdiction of the public servant's agency.

La. R.S. 42:1114 provides that each public servant and each member of his immediate family who derives anything of economic value, directly, through any transaction involving the agency of such public servant or who derives anything of economic value of which he may be reasonably expected to know through a person which (1) is regulated by the agency of such public servant, or (2) has bid on or entered into or is in any way financially interested in any contract, subcontract, or any transaction under the supervision or jurisdiction of the agency of such public servant shall disclose certain information as set forth in La. R.S. 42:1114.

CONCLUSION

The Board concluded, and instructed me to advise you, that under the specific circumstances presented above, Section 1111C(2)(d) of the Code would prohibit KA-JI Construction, LLC from accepting any compensation from parish contractors since the Accounting Department has a business or financial relationship with RAWL, or the lowest bidder, because your office processes the check. However, neither Section 1111C(2)(d) nor Section 1113A of the Code would prohibit your son from being employed by RAWL or another contractor to haul material to a landfill provided the parish contractor pays him directly and the subcontract is not under the supervision or jurisdiction of your agency, the Accounting Department.

La. R.S. 42:1113A prohibits a public servant or a member of such public servant's immediate family or a legal entity in which he has controlling interest from bidding on or entering into any contract, subcontract or other transaction that is under the supervision or jurisdiction of the public servant's agency. The contract or subcontract to haul materials to the landfill is not under your agency the Accounting Department.

However, Brody DeSouge, if awarded a subcontract to haul materials to the landfill, would be required to file a disclosure statement in compliance with Section 1114 of the Code. Section 1114 provides that the public servant and the immediate family member who are in any way interested in a contract or other transaction under the supervision of the public servant's agency are required to file a disclosure statement with the Board of Ethics. Since your agency, the Accounting Department, issues the check your son would be required to file a report by May 1st disclosing income received from contractors. Form 405 can be found at ethics.la.gov under Disclosure Forms. A copy has been enclosed for reference.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts presented may result in a different application of the provisions of the Code of Ethics. The Board issues no opinion as to past conduct or laws other than Code of Governmental Ethics. If you have any questions, please contact me at (225) 219-5600 or (800) 842-6630.

Sincerely,

LOUISIANA BOARD OF ETHICS

Suzanne Quinlan Mooney
For the Board

enclosure

DISCLAIMER
This is a draft opinion and it is **NOT** an opinion of the Louisiana Board of Ethics.
No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion only and are subject to change or revision at the meeting of the Board of Ethics at which this matter is considered.